

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the matter of:)	
)	
Tools & Hardware, LLC.)	SETTLEMENT AGREEMENT
)	AED/MSEB # 7163
Respondent.)	
)	
)	

This Settlement Agreement is made and entered by and between the United States Environmental Protection Agency (EPA) and Tools & Hardware, LLC, 10471 NW 36th Street, Miami, Florida (Respondent or Tools), regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 90.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Part 90 (Nonroad Regulations), arising out of the importation of 1,040 spark ignition (SI) nonroad engines and the equipment containing those engines, as described in Paragraph 8 of this Agreement (Subject Engines), while ensuring that future violations are avoided.

Definitions

2. For purposes of this Agreement, the following definitions apply:
 - a. *This matter*: as used in this agreement means Respondent’s importation of the Subject Engines and any civil liability that may apply to such violations.
 - b. *Certificate of Conformity*: the document issued by EPA to an engine manufacturer under 40 C.F.R. § 90.106, after EPA determines that the manufacturer’s application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Part 90 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer’s application after the date of the Certificate and before expiration of the covered model year.

- c. *Certified engine*: a nonroad engine built after the applicable date of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable date of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. *Applicable regulation and dates*: 40 C.F.R. Part 90 is applicable to nonroad spark-ignition engines with a gross power output at or below 19 kilowatts, built after the 1997 model year.
- f. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: the complete destruction of the engine and the complete disassembly of the equipment. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything, and the equipment shall be disassembled and broken down in such a manner that it can never be reassembled.

Statutory Authority

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless the engine or vehicle is covered by a Certificate of Conformity issued and in effect.

Nonroad SI Engine Regulatory Authority

- 4. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits the following acts and the causation thereof: “The importation into the United States [of] any new nonroad [SI] engine manufactured after the applicable effective date under this part unless such engine is covered by a certificate of conformity....”
- 5. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI engine manufactured after the applicable

effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 90.114.

6. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad SI engines or importing such engines for resale, or a person acting for, and under the control of, such person.
7. 40 C.F.R. 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad SI engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

Background

8. On or about July 6 and July 27, 2006, Respondent imported into the United States 1040 pieces of equipment containing the Subject Engines, described in the Table below.

Subject Engines Table

**Equipment Imported by Tools
Customs Entry Numbers: WIG 2038463-0 and WIG 2038664-3
Manufacturer: Jeng Feng Industrial Co LTD**

Equipment Type and Engine Size	Quantity	Certified (Y/N)	Label (Y/N)
Trimmer 28 cc	34	N	N
Trimmer 32 cc	238	N	N
Brush Cutter 32 cc	768	N	N
Total Units	1,040		

9. The Subject Engines are regulated by and subject to the requirements of the Nonroad Regulations.
10. On or about July 6 and July 27, 2006, an agent of the Respondent submitted to U.S. Customs and Border Protection (Customs) the EPA Importation of Nonroad Engines and Equipment Declaration Forms, EPA Form 3520-21, declaring that the Subject Engines had a rated power above 19 kW and (in an attached letter) were intended for export only.

11. Customs determined that the Subject Engines had a rated power of less than 19 kW and thus are subject to 40 C.F.R. Part 90.
12. Customs also determined that neither the Subject Engines nor the outside of their container were labeled or tagged “solely for export”, as is required for valid export-only SI engines pursuant to 40 C.F.R. § 90.909(a) and 40 C.F.R. § 90.1004(d).
13. Customs further determined that none of the Subject Engines were equipped with the permanent, legible identification labels required pursuant to 40 C.F.R. § 90.114.
14. On or about September 5, 2006, Customs seized the Subject Engines described in Paragraph 8, above. The Subject Engines continue to be held by Customs.
15. Subsequent EPA investigation established that none of the Subject Engines were certified as required under the applicable Nonroad Regulations.
16. As a result of the foregoing investigation into Respondent’s compliance with the Nonroad Regulations, EPA has determined that: Respondent is the importer of the Subject Engines; none of the Subject Engines were certified as required pursuant to 40 C.F.R. § 90.106; none of the Subject Engines were equipped with the permanent, legible identification labels required pursuant to 40 C.F.R. § 90.114; and none of the Subject Engines were qualified for the export-only exemption from the Nonroad Regulations under 40 C.F.R. § 90.909(a) and 40 C.F.R. § 90.1004(d).
17. Based upon the foregoing, EPA has determined that Respondent is liable for a minimum of 1,040 violations of Sections 203(a) and 213(d) of the Act, resulting from 1,040 violations of 40 C.F.R. § 90.1003(a)(1)(ii) and 40 C.F.R. § 90.1003(a)(4)(ii) of the Nonroad Regulations.

Terms of Agreement

18. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.
19. Respondent shall pay to the United States a civil penalty of \$10,000 (EPA penalty) for the 1,040 violations alleged in Paragraph 17 of this Agreement.
20. Respondent agrees to pay the EPA penalty to the United States of America within thirty days from the effective date of this Agreement (penalty due date). Late payment of the

EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the EPA penalty by certified check or cashier's check payable to the United States of America, and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB # 7163

A copy of the check shall simultaneously be sent to Ms. Fitzgerald at the following address:

Angela E. Fitzgerald, Attorney
Room 1117A - Ariel Rios South (2242A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

21. Within thirty days from the date that Customs releases the Subject Engines, or from the effective date of this Agreement if Customs has released the Subject Engines prior to the effective date of this Agreement, whichever is earlier, Respondent shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of Customs. Within forty-five days from the applicable date under this Paragraph 21, the Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed under the supervision of Customs.
22. Within forty-five days of the effective date of this Agreement, Respondent shall implement, and provide to Angela E. Fitzgerald of the EPA at the address specified for her in Paragraph 20 of this Agreement, a nonroad engine compliance plan which must be acceptable to EPA. The plan must be reasonably calculated to ensure that all nonroad engines imported by the Respondent into the United states after the effective date of this Agreement shall be imported in a manner that complies with all applicable EPA regulations, including the Nonroad Regulations.

Stipulated penalties

23. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
 - a. For failure to pay the penalty, or provide proof thereof, pursuant to Paragraph 20, \$250.00 per day;
 - b. For failure to appropriately export or destroy the Subject Engines, and provide proof thereof, pursuant to Paragraph 21, \$250.00 per day, per Subject Engine;
 - c. For failure to submit to EPA a compliance plan which is acceptable to EPA, and to timely implement that plan, all pursuant to Paragraph 22, \$250.00 per day.
24. All stipulated penalties under Paragraph 23 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent simultaneous accrual of separate stipulated penalties for separate violations of this agreement. All stipulated penalties shall be paid in accordance with Paragraph 23 and shall be paid within five days of written demand by EPA. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

General Provisions

25. Notwithstanding any other provisions of this Agreement, the parties agree that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act; or pursue any other remedies available to it. Respondent expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation or other provisions limiting actions as a result of passage of time.

26. The parties represent that the individual or individuals executing this Agreement on behalf of the respective party are authorized to do so and that such execution is intended and is sufficient to bind the respective party.
27. The Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
28. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
29. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA and the prompt and complete remediation of any violations in accordance with this Agreement.

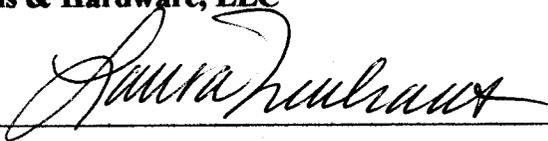
Effect of Agreement

30. Upon completion of the terms of this Agreement, this civil matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of Section 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, which are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal or local laws or regulations.

The following agree to the terms of this Agreement:

Tools & Hardware, LLC

By: _____



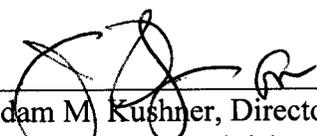
Date: Sept 12, 2006

Typed or Printed Name: LAURA NEUHAUS
Typed or Printed Title: Administrator

Settlement Agreement In the Matter of Tools & Hardware, LLC.

AED/ MSEB # 7163

U.S. Environmental Protection Agency

By:  _____

Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date: 9.19.06 _____